APPENDIX A.

The petition filed in the District Court alleged in paragraph 10 (R. 6) that the schedule of rates and charges prescribed by the Secretary's order of January 8, 1934, and his supplemental order of March 12, 1934, were the result of an investigation of costs, volume of business and receipts for the years 1931 and 1932; and that subsequent to those years, subsequent to the orders of the Secretary, and subsequent to the hearing and decree of the District Court in the *Acker* case, the receipts of live stock at the Chicago yards had decreased in volume until, for example, the receipts in August, 1935 were the lowest of any August since the year 1882. It was further charged that changed economic conditions, the decrease in volume of live stock, and the decreased volume of receipts had caused such losses and created such hardship that the petitioners were compelled in self-preservation to file and publish a new schedule of rates effective November 1, 1935.

It is further alleged in paragraph 11 of the petition (R. 6, *et seq.*) that the Secretary refused to act in the premises, although two petitions for rehearing had been filed, because of the pending litigation over the Secretary's orders of January 8, 1934 and March 12, 1934.

The Government in the District Court did not deny any of the allegations of the petition. It based its defense to the application for a restraining order solely upon the ground that the market agencies had no right under the law to establish a new set of rates. The Secretary had previously denied any relief on the ground that litigation was pending over a previous rate order (Letter of September 30, 1935, R. 8).

To show the effect upon the business of the market

agencies caused by changed and changing conditions, to show the decreased volume of live stock, and to show that a rate order based upon evidence of the years 1931 and 1932 is entirely inadequate in 1935 and 1936—all of which the Secretary has consistently refused to consider—we refer to publications of the Department of Agriculture.

Senate Document, Seventy-Third Congress, Second Session, No. 140, entitled "Emergency Hog Marketing Program," dated February 21, 1934, shows in tabular form that as of January 15, 1934 (one week after the entry of the Order in the *Acker* case), 6,410,866 pigs, sows and inedible little pigs had been killed as a result of the Emergency Hog Marketing Program.

We quote further from page 42 of the same publication:

> "The sale of extra pigs, on the basis of the difference between their weight at the time of emergency sale and the average weight to which hogs are fed, should mean a reduction of approximately 400,000,000 pounds in the future supplies. The sale of approximately 770,000 more sows, however, would have meant a potential decrease in market supplies next summer of approximately 850,000,000 pounds of live hogs. This is because the sale of each sow would have removed from fall farrowings approximately five pigs, which under normal circumstances, are fed to an average market weight of about 225 pounds. Whereas the original expected decrease in future market supplies was between 1,500,000,000 and 1,800,000,000, the actual reduction as a result of the program will be in the neighborhood of 1,000,000,000 to 1,200,000,000 pounds."

In November, 1935, the United States Department of Agriculture issued its miscellaneous publication No. 235, entitled "The Agricultural Outlook for 1936." Without comment we quote from this bulletin. Under the heading "Meat Animals and Meats" and the sub-head "Supplies," the following is found:

> "The supply of meat animals on farms in terms of

the total live weight of the three species at the beginning of 1936 probably will not be greatly different from a year earlier, *when the aggregate supply was estimated to be the smallest in more than 30 years.* With none of these species is there any present certainty as to whether numbers on January 1, 1936, will be larger or smaller than a year earlier, and with none of them is the change, either upward or downward, expected to be large. It seems probable, however, that a considerable increase in the number of hogs on farms will occur during 1936 and some increase in cattle numbers next year is also probable.

From 1928 to the beginning of 1934 the trend in the number of meat animals was upward. The increase during this period in terms of total live weight was about 12 per cent. Most of this increase was eliminated in 1934, largely as a result of the severe drought. The number of cattle on farms increased steadily from 1928 to early 1934 with the increase in numbers from January 1, 1928, to January 1, 1934, amounting to 11,600,000 head, or 20 per cent. By the beginning of 1935, however, cattle numbers were about 7,600,000 smaller than at the beginning of 1934. Thus, more than three-fifths of the increase occurring in the 5 years 1928-34 was eliminated by the beginning of 1935. Hog production (number of pigs raised) decreased from 1928 to 1930 and increased sharply in 1931 with little change in 1932 or 1933. Partly as a result of the 1934 drought and the resulting shortage of feed grains and partly as a result of the low corn-hog price ratio prevailing from the middle of 1933 to early 1934, the number of pigs produced in 1934 was 35 per cent smaller than in 1933 and was the smallest number produced in many years. *The number of hogs on farms at the beginning of 1935 was the smallest in 50 years.* Sheep numbers increased steadily from 1923 to 1932, the increase amounting to about 17,000,000 head, or 45 per cent. From 1932 to 1934, sheep numbers declined slightly but the number on January 1, 1935, was about 5 per cent smaller than a year earlier and was the smallest since 1929'' (pp. 53 & 54).

Further, under the same heading, the following is found:

''The net results of these different factors influencing livestock production probably will be to per-

petuate a situation caused temporarily by the 1934 drought; that is, to decrease somewhat the proportion of livestock production from the area covering the Great Plains and westward and to increase the proportion in the area east of the Mississippi River and including the East North Central, East South Central, and South Atlantic States" (pp. 54-55).

Under the heading "Hogs—Domestic Supplies," we quote as follows:

> *"Although federally inspected slaughter of hogs during the 1934-35 marketing year, totalling 30,678,000 head, was the smallest in 25 years, it is expected that slaughter in the 1935-36 marketing year will be even smaller.* The 1935 spring pig crop was estimated by the Department of Agriculture at 30,402,000 head for the United States. This is a decrease of 7,405,000 head, or 19.6 per cent, from the spring pig crop of 1934 and a decrease of 20,814,000, or 40 per cent, from the average of the spring crops of 1932 and 1933. *In the North Central (Corn Belt) States the spring crop this year was 22.3 per cent smaller than that of 1934 and 42 per cent below the 1932-33 average.*
>
> "The number of sows to farrow in the fall season of 1935 was estimated in the June pig crop report at 3,175,000 head. This is an increase of 19.5 per cent over the very small number farrowed in the fall of 1934, but is 34 per cent smaller than the average of 1932 and 1933. The total number of litters, spring and fall, to be farrowed in 1935 was indicated in the June pig crop report to be about 8,196,000. This is a reduction of more than 10 per cent from the total of 1934 and of 41 per cent from the average of 1932 and 1933. For the Corn Belt States the reduction in total litters in 1935 is 12 per cent from 1934 and 44 per cent from the average of 1932 and 1933. If the average number of pigs saved per litter in the fall of 1935 is as much above the fall of 1934 as the spring of 1935 was over the spring of 1934, the total number of pigs saved in 1935 will be less than 50,000,000 head. This would be about 4,000,000 head less than the total number of pigs saved in 1934 and more than 31,000,000 head less than the average of 1932 and 1933. *Inspected slaughter in the marketing year 1935-36 from such a*

production probably will total between 27,000,000 and 28,500,000 head, and be the smallest since the year 1909-10" (p. 56).

Further, under the subject "Hogs—Production Outlook," the following is found:

"The end of the downward trend in hog production which began in the fall season of 1933 apparently was reached with the small spring-pig crop of 1935, and increasing production can be expected during 1936 and 1937. *How rapidly hog production will increase during the next 2 years is uncertain, since there are no other periods in which the decrease in production was so great as it was in 1934 and 1935.* The nearest comparable situations to the present were those from 1908 to 1912 and from 1891 to 1896. Inspected slaughter for the marketing years 1909-10 (pig crops of 1909) decreased 7,500,000 head, or about 21 per cent, from the previous year. Hog prices in 1910 advanced sharply and the 1910 pig crop, especially the fall crop, increased markedly. Inspected slaughter for the 1910-11 marketing year increased about 4,000,000 head and in the 1911-12 year was back about to the 1908-09 level.

"Between the marketing years 1891-92 and 1892-93 the estimated inspected slaughter equivalent decreased about 6,500,000 head, or 27 per cent, and it was not until the marketing year 1895-96 that it again reached the 1891-92 level. During that period, the 1894 drought occurred—probably the most severe ever known in this country with the exception of the one in 1934—and this doubtless tended to keep production from increasing more rapidly. In that period the drought occurred in the second year after production had been greatly reduced, whereas in the present period it occurred in the same year. The decrease in federally inspected slaughter for the 1934-35 year from 1933-34 amounted to 13,200,000 head, or 30 per cent. If allowance were made for the pigs bought by the Government and slaughtered in August, 1933 from the 1933 pig crop, the decrease was about 39 per cent. Slaughter in the marketing year 1935-36 is expected to be about 5 to 10 per cent smaller than that in 1934-35. *No such reduction, either in numbers or in percentages as has taken place in the last 2 years, has ever before oc-*

curred and how rapidly a recovery can be made is very uncertain" (p. 59).

Under the subject "Beef Cattle—Supplies," the bulletin states as follows:

"The number of cattle on farms January 1, 1935, was 60,557,000 head, according to the estimate of the United States Department of Agriculture. This was 7,623,000 head, or 11.2 per cent, less than the number January 1, 1934, but was about 3,000,000 head more than on January 1, 1928, the last low point of the cattle-number cycle. Compared with 1928, however, all of the increase was in the number of cattle kept principally for milk (cows, heifers, and heifer calves) and there was a small decrease in the number of other cattle, mostly cattle kept principally for beef. Compared with January 1, 1934, there were reductions of 2,221,000 head, or 6 per cent in milk stock and 5,402,000 head, or 17 per cent, in other cattle.

"The decrease in cattle numbers during 1934 was larger than during any year of record. It was largely a result of the severe drought which extended over most of the country west of the Mississippi River and of the purchase and slaughter of cattle and calves as a part of the drought-relief activities of the Federal Government. Had there been no drought, it is probable that some decrease in cattle numbers would have occurred in 1934, but if feed production had been fairly normal the reduction would have been relatively small. *With no abnormal conditions, such as wide-spread feed shortage or production-control plans, cattle numbers would have declined for some years and another low point in numbers would have been reached in about 1939 or 1940. Most of the decrease that would have normally extended over the following 5 or 6 years therefore occurred in 1934"* (pp. 60-61).

* * * * * *

" * * * * Cattle marketings from all the West North Central States, except Kansas, during the first half of the year were sharply below those of the first half of 1934 and the marketings from most of the Western States were relatively small, except from California" (p. 62).

* * * * * *

" * * * * *Receipts of beef steers at Chicago during the first 9 months of 1935 were much the smallest for those months in the 14 years of record, being nearly 30 per cent smaller than in 1934 and 34 per cent smaller than the average of the preceding 5 years.*

The number of cattle on feed in the Corn Belt States on August 1 was estimated as about 30 per cent smaller than a year earlier and the smallest for that date in many years" (p. 62).

Under the subject "Sheep and Lambs—Supplies," the bulletin has the following information:

"According to the estimate of the department of Agriculture, the 1935 lamb crop of 27,630,000 head was the smallest since 1929. It was 7 per cent, or 2,030,000 head, smaller than the 1934 crop and 4,600,000 head smaller than the record crop of 1931. The decrease from 1934 was all in the western sheep States since the native-lamb crop of 1935 was somewhat larger than that of 1934. Although the number of breeding ewes on January 1, 1935, in the native-sheep States was 2 per cent smaller than a year earlier, the number of lambs saved per 100 ewes (the percentage lamb crop) in 1935 was enough larger than in 1934 to more than offset this decrease in ewes. The native-lamb crop of 1935 was practically the same as the average native-lamb crop for the 5 years 1930 to 1934.

"The 1935 lamb crop in the western sheep States was the smallest since 1927, being 11 per cent, or 2,070,000 head smaller than the 1934 crop. The number of breeding ewes January 1, 1935, was 7 per cent smaller than a year earlier and the percentage lamb crop was the smallest in the 14 years for which records are available, being 70.3 compared with 73.8 in 1934 and 78.2 the average from 1925 to 1934. The crop of 1935 was smaller than that of 1934 in all of the Western States, except California and New Mexico. The decreases from last year were relatively the largest in the late-lambing States and all of the decrease from last year was in late lambs, as the early-lamb crop (which covers lambs dropped before Mar. 15) was but little different from last year.

"The small western lamb crop this year was a result of the 1934 drought. The reduction in breeding

ewes was related directly to the drought through the relief activities of the Federal Government under which some 3,450,000 ewes were bought in the Western States in the late months of 1934. Because of the very bad range conditions during the summer and fall of 1934, ewes in nearly all of the western sheep States were in poor condition at breeding time and the number of dry ewes this spring was relatively large. Death losses of ewes, although rather heavy in some States, were only about average for the western area as a whole. The favorable weather during most of the winter and early spring tended to offset the shortage of feed and the poor condition of ewes at the beginning of the winter. Weather conditions during lambing were about average, but there were above-average losses of lambs in some States as a result of the cold, wet weather in May and early June and because of the lateness of new grass.

"Although the lamb crop of 1935 was materially smaller than that of 1934, the slaughter of 1935 lambs during the first 5 months of the 1935-36 marketing year (May 1, 1935, to Apr. 30, 1936) was considerably larger than during the first 5 months of the 1934-35 year. Inspected slaughter during the 5 months this year of 7,765,000 head was 962,000 head, or 12½ per cent larger ord. *This heavy slaughter during the first half of the marketing year, in view of the smaller lamb crop, indicates a reduction in the slaughter supply during the remainder of the year relatively much greater than the reduction in the size of the lamb crop*" (pp. 66-67).

APPENDIX B.

Packers and Stockyards Act, 1921 (Provisions of Act relating to Stockyards and stockyard dealers). U. S. C. Title 7.

STOCKYARDS AND STOCKYARDS DEALERS.

§ 201. (301) "Stockyard owners"; "stockyard services"; "market agency"; "dealer"; defined. When used in this chapter—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyards services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser. (Aug. 15, 1921, c. 64, § 301, 42 Stat. 163.).

§ 202. (302) "Stockyard" defined; determination by Secretary as to particular yard. (a) When used in sections 201 to 217, inclusive, of this chapter the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. Sections 201 to 217 inclusive of this chapter shall not apply to a stockyard of which the area normally available for handling

livestock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet.

(b) The Secretary shall from time to time ascertain, after such inquiry as he deems necessary, the stockyards which come within the foregoing definition, and shall give notice thereof to the stockyard owners concerned, and give public notice thereof by posting copies of such notice in the stockyard, and in such other manner as he may determine. After the giving of such notice to the stockyard owner and to the public, the stockyard shall remain subject to the provisions of sections 201 to 217 inclusive of this chapter until like notice is given by the Secretary that such stockyard no longer comes within the foregoing definition. (Aug. 15, 1921, c. 64, § 302, 42 Stat. 163.)

§ 203. (303) Registration of stockyard dealer or market agency; penalty for failure to register. After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 202 of this chapter by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyard services, if any, which he furnishes at such stockyard. Whoever violates the provisions of this section shall be liable to a penalty of not more than $500 for each such offense and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States. (Aug. 15, 1921, c. 64, § 303, 42 Stat. 163.)

§ 204. Bond and suspension of registrants. The Secretary of Agriculture may require reasonable bonds from every market agency and dealer, under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing the Secretary finds any registrant is insolvent or has violated any provision of this chapter he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the

Secretary of Agriculture or a court of competent jurisdiction. (Feb. 10, 1925, c. 200, 43 Stat. 851.)

§ 205. (304) General duty as to services. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard. (Aug. 15, 1921, c. 64, § 304, 42 Stat. 164.)

§ 206. (305) Rates and charges generally; discrimination. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and non-discriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. (Aug. 15, 1921, c. 64, § 305, 42 Stat. 164.)

§ 207. (306) Schedule of rates; filing and exhibition; change in rates; suspension; penalties. (a) Within sixty days after the Secretary has given public notice that a stockyard is within the definition of section 202 of this chapter, by posting copies of such notice in the stockyard, the stockyard owner and every market agency at such stockyard shall file with the Secretary, and print and keep open to public inspection at the stockyard, schedules showing all rates and charges for the stockyard services furnished by such person at such stockyard. If a market agency commences business at the stockyard after the expiration of such sixty days such schedules must be filed before any stockyard services are furnished.

(b) Such schedules shall plainly state all such rates and charges in such detail as the Secretary may require, and shall also state any rules or regulations which in any manner change, affect, or determine any part or the aggregate of such rates or charges, or the value of the stockyard services furnished. The Secretary may determine and prescribe the form and manner in which such schedules shall be prepared, arranged, and posted, and may from time to time make such changes in respect thereto as may be found expedient.

(c) No changes shall be made in the rates or charges so filed and published, except after ten days' notice to the Secretary and to the Public filed and published as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect; but the Secretary may, for good

cause shown, allow changes on less than ten days' notice, or modify the requirements of this section in respect to publishing, posting, and filing of schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

(d) The Secretary may reject and refuse to file any schedule tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Secretary shall be void and its use shall be unlawful.

(e) Whenever there is filed with the Secretary any schedule, stating a new rate or charge, or a new regulation or practice affecting any rate or charge, the Secretary may, either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the person filing such schedule, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, charge, regulation, or practice, and pending such hearing and decision thereon the Secretary, upon filing with such schedule and delivering to the person filing it a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, regulation, or practice, but not for a longer period than thirty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, regulation, or practice goes into effect, the Secretary may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing cannot be concluded within the period of suspension the Secretary may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, charge, regulation, or practice shall go into effect at the end of such period.

(f) After the expiration of the sixty days referred to in subdivision (a) no person shall carry on the business of a stockyard owner or market agency unless the rates and charges for the stockyard services furnished at the stockyard have been filed and published in accordance with this section and the orders of the

Secretary made thereunder; nor charge, demand, or collect a greater or less or different compensation for such services than the rates and charges specified in the schedules filed and in effect at the time; nor refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from bona fide returning to its members, on patronage basis, its excess earnings on their livestock, subject to such regulations as the Secretary may prescribe); nor extend to any person at such stockyard any stockyard services except such as are specified in such schedules.

(g) Whoever fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall be liable to a penalty of not more than $500 for each such offense, and not more than $25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(h) Whoever willfully fails to comply with the provisions of this section or of any regulation or order of the Secretary made thereunder shall on conviction be fined not more than $1,000, or imprisoned not more than one year, or both. (Aug. 15, 1921, c. 64, § 306, 42 Stat. 164.)

§ 208. (307) Unreasonable or discriminatory practices generally. It shall be the duty of every stockyard owner and market agency to establish, observe, an enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful. (Aug. 15, 1921, c. 64, § 307, 42 Stat. 165.)

§ 209. (308) Liability to individuals for violations; enforcement generally. (a) If any stockyard owner, market agency, or dealer, violates any of the provisions of sections 205, 206, 207, or 208 of this chapter, or any order of the Secretary made under sections 201 to 217 inclusive of this chapter, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as provided in section 210 of this chapter, or (2) by suit in any district court of

the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies. (Aug. 15, 1921, c. 64, § 308, 42 Stat. 165.)

§ 210. (309) Proceedings before Secretary for violations generally, action to enforce order of Secretary. (a) Any person complaining of anything done or omitted to be done by any stockyard owner, market agency, or dealer (hereinafter in this section referred to as the "defendant") in violation of the provisions of sections 205, 206, 207, or 208 of this chapter, or of an order of the Secretary made under sections 201 to 217 inclusive of this chapter, may, at any time within ninety days after the cause of action accrues, apply to the Secretary by petition which shall briefly state the facts, whereupon the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary. If the defendant within the time specified makes reparation for the injury alleged to be done he shall be relieved of liability to the complainant only for the particular violation thus complained of. If the defendant does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters complained of in such manner and by such means as he deems proper.

(b) The Secretary, at the request of the livestock commissioner, board of agriculture, or other agency of a State or Territory, having jurisdiction over stockyards in such State or Territory, shall investigate any complaint forwarded by such agency in like manner and with the same authority and powers as in the case of a complaint made under subdivision (a).

(c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provisions of sections 201 to 217 inclusive of this chapter, or concerning which any question may arise under any of the provisions of sections 201 to 217 inclusive of this chapter, or relating to the enforcement of any

of the provisions of sections 201 to 217 inclusive of this chapter. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit. (Aug. 15, 1921, c. 64, § 309, 42 Stat. 165.)

§ 211. (310) Order of Secretary as to charges or practices; prescribing rates and practices generally. Whenever after full hearing upon a complaint made as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion

that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services; is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, § 310, 42 Stat. 166.)

§ 212. (311) Prescribing rates and practices to prevent discrimination between intrastate and interstate commerce. Whenever in any investigation under the provisions of sections 210 to 217 inclusive of this chapter, or in any investigation instituted by petition of the stockyard owner or market agency concerned, which petition is hereby authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner or market agency, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden and declared to be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such

manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners or market agencies parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding. (Aug. 15, 1921, c. 64, § 311, 42 Stat. 167.)

§ 213. (312) Prevention of unfair, discriminatory, or deceptive practices. (a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce at a stockyard, of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. (Aug. 15, 1921, c. 64, § 312, 42 Stat. 167.)

§214. (313) When orders effective generally. Except as otherwise provided in this chapter all orders of the Secretary under sections 201 to 217 inclusive of this chapter, other than orders for the payment of money, shall take effect within such reasonable time not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction. (Aug. 15, 1921, c. 64, § 313, 42 Stat. 167.)

§ 215. (314) Failure to obey orders generally; punishment. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 211, 212, or 213 of this chapter shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing viola-

tion each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (Aug. 15, 1921, c. 64, § 314, 42 Stat. 167.)

§ 216. (315) Court proceedings to enforce orders; injunction. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same. (Aug. 15, 1921, c. 64, § 315, 42 Stat. 167.)

§ 217. (316) Proceedings for suspension of orders. For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, § 316, 42 Stat. 168.)

APPENDIX C.

Provisions of statutes relating to venue, jurisdiction and appeal (from U. S. Code, Title 28).

§ 43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)

§ 44. Procedure in certain cases under interstate commerce laws; service of processes of court. The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title. The orders, writs, and processes of the district courts may in the cases specified in this section and in the cases and proceedings under sections 20, 43 and 49 of Title 49, run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§ 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of the cases specified in section 44 of this title, and of the cases and proceedings under sections 20, 43 and 49 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. (June 18, 1910, c. 309, § 1, 36 Stat. 539; Mar. 3, 1911, c. 231, § 209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§ 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in

part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, § 3, 36 Stat. 542; Mar. 3, 1911, c. 231, § 208, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§ 47. Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: Provided, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be

given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§ 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of the court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, § 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)